

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7676 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

INDRAVADAN C KHARVAR & ORS.

Versus

SURAT MUNICIPAL CORPORATION & ORS.

Appearance:

MR RJ OZA for Petitioners
MR GN DESAI for Respondents No. 1 to 3
MR VB GHARANIA for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/12/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. By way of this petition, the petitioners beg to challenge the decision of the respondent authorities to hand over the development rights of the plots bearing Final Plot No.M/8 of Town Planning Scheme No.5 (Athwa-Umra) by inviting offers from the public on the basis of long lease, offset price of which has been fixed at Rs.4000/- per sq.

meter.

2. This decision of the respondents has been stated to be illegal, arbitrary, discriminatory and violative of Articles 14 and 19(1)(g) of the Constitution of India.

3. On application of provisions of Bombay Town Planning Act, 1964 and the rules framed thereunder, a Draft Development Scheme was prepared and the land in dispute was kept under reservation for use of Surat Municipal Corporation. The said Town Planning Scheme no.5 (Athwa-Umra) was finalised by the Government Notification dated 18th November, 1977 and the aforesaid land was specified as final plot no.M-8 T.P. Scheme No.5 (Athwa-Umra). This land is situated near Police Ground, Surat and is admeasuring about 24552.52 sq. mts.. From the document which has been produced on record, it comes out that the land has been reserved for District Centre.

4. The petitioner has made a prayer in the writ petition that the respondent authorities be restrained from handing over the development rights of the land, bearing final plot no.M-8 of T.P. Scheme no.5 by inviting offers from the public on the basis of long term lease.

5. The counsel for the petitioners is unable to say how such an injunction can be issued against the respondents more so when the counsel for the respondent-Corporation very fairly submitted that the land in question shall be used for the purpose for which it was reserved in the final town planning scheme unless the same is changed or modified in accordance with law.

6. The counsel for the respondents relying on the decision of the Supreme Court in the case of G.B. Mahajan vs. The Jalgaon Municipal Council reported in JT 1991 (1) SC 605 contended that the grievance of the petitioners that the land in question was acquired and compensation was given at the rate of Rs.19/- per sq. mt. but now the long term lease is proposed to be given on the premium of Rs.4000/- per sq. mt., no more survives. Only restriction which could be put on the Corporation is to use the land only for the purpose for which it was earmarked in the final scheme.

7. In view of the aforesaid statement made by the counsel for the respondents and the decision of the Supreme Court in the case of G.B. Mahajan vs. The Jalgaon Municipal Council (supra), I am of the opinion that no grievance whatsoever of the petitioners survive

in this Special Civil Application. The counsel for the petitioners also fairly submitted that he has no instruction in the matter to the statement which has been made by the counsel for the respondents.

8. Taking into consideration the totality of the facts of this case and the decision of the Supreme Court in the case of G.B. Mahajan vs. The Jalgaon Municipal Council (supra) this writ petition deserves to be dismissed and the same is dismissed. Rule discharged. No order as to costs.

zgs/-